

100TH CONGRESS
1ST SESSION

S. 1908

To repeal health maintenance organization authorities.

IN THE SENATE OF THE UNITED STATES

DECEMBER 1 (legislative day, NOVEMBER 30), 1987

Mr. WALLOP introduced the following bill; which was read twice and referred to
the Committee on Finance

A BILL

To repeal health maintenance organization authorities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE AND REFERENCES IN ACT

4 SECTION 1. (a) This Act may be cited as the “Health
5 Maintenance Organization Amendments of 1987”.

6 (b) The amendments in this Act apply to the Public
7 Health Service Act unless otherwise specifically stated.

8 REPEAL OF HEALTH MAINTENANCE ORGANIZATION

9 AUTHORITIES

10 SEC. 2. (a) Sections 1301, 1302, 1305, 1306, 1307(d),
11 1309, 1310, 1311, 1312, 1313, 1315, 1317, and 1318 (42
12 U.S.C. 300e, 300e-1, 300e-4, 300e-5, 300e-6(d), 300e-8,

1 300e-9, 300e-10, 300e-11, 300e-12, 300e-14, 300e-16,
2 and 300e-17) are repealed.

3 (b) Section 1307(b) (42 U.S.C. 300e-6(b)) is amended
4 by striking out the second sentence.

5 (c) Section 1308(a) (42 U.S.C. 300e-7(a)) is amended—

6 (1) by striking out paragraph (1),

7 (2) by striking out the paragraph designation
8 “(2)”,

9 (3) in subparagraph (B), by striking out “subpara-
10 graph (C)” and “subparagraph (D)” and inserting in-
11 stead “paragraph (3)” and “paragraph (4)”, respec-
12 tively,

13 (4) in subparagraph (C), by striking out the clause
14 designations “(i)” and “(ii)” and inserting instead
15 “(A)” and “(B)”, respectively, and

16 (5) by redesignating subparagraphs (A) through
17 (D) as paragraphs (1) through (4).

18 (d) Section 1308(b) (42 U.S.C. 300e-7(b)) is amended—

19 (1) by striking out paragraphs (1) and (2), and

20 (2) by striking out the paragraph designation
21 “(3)”.

22 (e) The first sentence of section 1308(e) (42 U.S.C.
23 300e-8(e)) is amended by striking out “to make loans under
24 this title”.

1

CONFORMING AMENDMENTS

2

SEC. 3. (a) Section 8902(1) of title 5, United States

3

Code, is repealed.

4

(b) Section 1101(a) of the Social Security Act (42

5

U.S.C. 301(a)) is amended by striking out paragraph (9).

6

(c) Section 1124(a)(2)(A) of the Social Security Act (42

7

U.S.C. 1320a-3(a)(2)(A)) is amended by striking out "a

8

health maintenance organization (as defined in section

9

1301(a) of the Public Health Service Act)" and inserting in-

10

stead "an eligible organization (as defined in section

11

1876(b))".

12

(d) Section 1875(b) of the Social Security Act (42

13

U.S.C. 139511(b)) is amended by striking out "the operation

14

and administration of health maintenance organizations au-

15

thorized by section 226 of the Social Security Amendments

16

of 1972,".

17

(e) Section 1876(b) of the Social Security Act (42

18

U.S.C. 1395mm(b)) is amended by striking out everything

19

after "under the laws of any State," and inserting instead the

20

following:

21

"which meets the following requirements:

22

"(1) The entity provides to enrolled members at

23

least the following health care services:

24

"(A) Physicians' services performed by phy-

25

sicians (as defined in section 1861(r)(1)).

1 “(B) Inpatient hospital services.

2 “(C) Laboratory, X-ray, emergency, and pre-
3 ventive services.

4 “(D) Out-of-area coverage.

5 “(2) The entity is compensated (except for deduc-
6 tibles, coinsurance, and copayments) for the provision
7 of health care services to enrolled members by a pay-
8 ment which is paid on a periodic basis without regard
9 to the date the health care services are provided and
10 which is fixed without regard to the frequency, extent,
11 or kind of health care services actually provided to a
12 member.

13 “(3) The entity provides physicians’ services pri-
14 marily (A) directly through physicians who are either
15 employees or partners of such organization, or (B)
16 through contracts with individual physicians or one or
17 more groups of physicians (organized on a group prac-
18 tice or individual practice basis).

19 “(4) The entity assumes full financial risk on a
20 prospective basis for the provision of the health care
21 services listed in paragraph (1), except that such entity
22 may—

23 “(A) obtain insurance or make other arrange-
24 ments for the cost of providing to any enrolled
25 member health care services listed in paragraph

1 (1) the aggregate value of which exceeds \$5,000
2 in any year,

3 “(B) obtain insurance or make other arrange-
4 ments for the cost of health care services listed in
5 paragraph (1) provided to its enrolled members
6 other than through the entity because medical ne-
7 cessity required their provision before they could
8 be secured through the entity,

9 “(C) obtain insurance or make other arrange-
10 ments for not more than 90 per centum of the
11 amount by which its costs for any of its fiscal
12 years exceed 115 per centum of its income for
13 such fiscal year, and

14 “(D) make arrangements with physicians or
15 other health professionals, health care institutions,
16 or any combination of such individuals or institu-
17 tions to assume all or part of the financial risk on
18 a prospective basis for the provision of basic
19 health services by the physicians or other health
20 professionals or through the institutions.

21 “(5) The entity has made adequate provision
22 against the risk of insolvency, which provision is satis-
23 factory to the Secretary.

24 Paragraph (1)(B) shall not apply to an entity which had con-
25 tracted with a single State agency administering a State plan

1 approved under title XIX for the provision of services (other
2 than inpatient hospital services) to individuals eligible for
3 such services under such State plan on a prepaid risk basis
4 prior to 1970.”.

5 (f) Section 1876(e)(3) of the Social Security Act (42
6 U.S.C. 1395mm(e)(3)) is amended—

7 (1) in subparagraph (A), by striking out “section
8 1302(8) of the Public Health Service Act, other than
9 subparagraph (C)” and inserting instead “subparagraph
10 (B)”,

11 (2) by redesignating subparagraphs (A) and (B) as
12 clauses (i) and (ii), respectively,

13 (3) by inserting “(A)” after the paragraph design-
14 nation “(3)”, and

15 (4) by adding at the end the following:

16 “(B)(i) For purposes of paragraph (A), the term ‘commu-
17 nity rating system’ means a system of fixing rates of pay-
18 ments for health services on a per-person or per-family basis
19 that may authorize the rates to vary with the number of per-
20 sons in a family but, except as authorized in clause (ii), the
21 rates must be equivalent for all individuals and for all families
22 of similar composition.

23 “(ii) The following differentials in rates of payments
24 may be established:

1 “(I) Nominal differentials in such rates may be es-
2 tablished to reflect differences in marketing costs and
3 the different administrative costs of collecting payments
4 from the following categories of members: Individual
5 members (including their families), small groups of
6 members (as determined under regulations of the Sec-
7 retary), and large groups of members (as determined
8 under regulations of the Secretary).

9 “(II) Nominal differences in such rates may be es-
10 tablished to reflect the compositing of the rates of pay-
11 ment in a systematic manner to accommodate group
12 purchasing practices of various employers.

13 “(III) Differentials in such rates may be estab-
14 lished for members enrolled pursuant to a contract with
15 a government authority under section 1079 or 1086 of
16 title 10, United States Code, or under any other gov-
17 ernmental program (other than the health benefits pro-
18 gram authorized by chapter 89 of title 5, United States
19 Code) or any health benefits program for employees of
20 States, political subdivisions of States, and other public
21 entities.”.

22 (g) Section 1876(i)(3)(C)(i) of the Social Security Act (42
23 U.S.C. 1395mm(i)(3)(C)(i)) is amended to read as follows:

24 “(C)(i) shall require the organization to protect its
25 members from incurring liability for payment of any

1 fees which are the legal obligation of the organization
2 through—

3 “(I) a contractual arrangement with any hos-
4 pital that is regularly used by the members of the
5 organization prohibiting the hospital from holding
6 any such member liable for payment of any fees
7 which are the legal obligation of the organization,

8 “(II) insolvency insurance, acceptable to the
9 Secretary,

10 “(III) adequate financial reserve, acceptable
11 to the Secretary, or

12 “(IV) other arrangements, acceptable to the
13 Secretary, to protect members,

14 except that the above requirement shall not apply if
15 applicable State law provides the members of the orga-
16 nization with protection from liability for payment of
17 any fees which are the legal obligation of the organiza-
18 tion;”.

19 (h) Section 1902(e)(2)(A) of the Social Security Act (42
20 U.S.C. 1396a(e)(2)(A)) is amended by striking out “a quali-
21 fied health maintenance organization (as defined in title XIII
22 of the Public Health Service Act)” and inserting instead “an
23 eligible organization (as defined in section 1876(b))”.

24 (i) The first sentence of section 1903(g)(1) of the Social
25 Security Act (42 U.S.C. 1396b(g)(1)) is amended by striking

1 out “a health maintenance organization as defined in section
2 1876 or which is a qualified health maintenance organization
3 (as defined in section 1310(d) of the Public Health Service
4 Act)” and inserting instead “an eligible organization as de-
5 fined in section 1876(b)”.

6 (j) Section 1903(m)(1) of the Social Security Act (42
7 U.S.C. 1396b(m)(1)) is amended—

8 (1) by striking out subparagraph (B),

9 (2) by striking out the subparagraph designation
10 “(A)”,

11 (3) by striking out “a qualified health maintenance
12 organization (as defined in section 1310(d) of the
13 Public Health Service Act)” and inserting instead “an
14 eligible organization (as defined in section 1876(b))”,
15 and

16 (4) by redesignating clauses (i) and (ii) as subpara-
17 graphs (A) and (B), respectively.

18 (k) Section 1903(m)(2) of the Social Security Act (42
19 U.S.C. 1396b(m)(2)) is amended—

20 (1) in subparagraph (E)(ii), by striking out “a
21 qualified health maintenance organization (as defined in
22 section 1310(d) of the Public Health Service Act)” and
23 inserting instead “an eligible organization (as defined
24 in section 1876(b))”,

1 (2) in subparagraph (E)(iv), by striking out
2 “1302(7)” and inserting instead “330(b)(3)”, and

3 (3) in subparagraph (F), by striking out in the first
4 sentence “a qualified health maintenance organization
5 (as defined in section 1310(d) of the Public Health
6 Service Act)” and inserting instead “an eligible organi-
7 zation (as defined in section 1876(b))”.

8 (l) Section 1903(m) of the Social Security Act (42
9 U.S.C. 1396(m)) is further amended—

10 (1) by striking out paragraph (3),

11 (2) by renumbering paragraphs (4) and (5) as (3)
12 and (4), respectively, and

13 (3) in paragraph (2)(A)(viii), by striking out “(4)”
14 and inserting instead “(3)”.

15 (m) Section 1903(m)(3) of the Social Security Act (42
16 U.S.C. 1396b(m)(3)) (as renumbered by subsection (l) of this
17 section) is amended—

18 (1) in the matter in subparagraph (A) preceding
19 clause (i), by striking out “which is not a qualified
20 health maintenance organization (as defined in section
21 1310(d) of the Public Health Service Act)” and “(as
22 defined in section 1318(b) of that Act)”, and

23 (2) by adding at the end the following:

24 “(C) For purposes of this paragraph, the term
25 ‘party in interest’ means—

1 “(i) any director, officer, partner, or employ-
2 ee responsible for management or administration
3 of a health maintenance organization, any person
4 who is directly or indirectly the beneficial owner
5 of more than 5 per centum of the equity of the
6 organization, any person who is the beneficial
7 owner of a mortgage, deed of trust, note, or other
8 interest secured by, and valuing more than 5 per
9 centum of, the health maintenance organization,
10 and, in the case of a health maintenance organiza-
11 tion organized as a nonprofit corporation, an in-
12 corporator or member of such corporation under
13 applicable State corporation law;

14 “(ii) any entity in which a person described
15 in clause (i)—

16 “(I) is an officer or director,

17 “(II) is a partner (if such entity is orga-
18 nized as a partnership);

19 “(III) has directly or indirectly a benefi-
20 cial interest of more than 5 per centum of
21 the assets of such entity; or

22 “(IV) has a mortgage, deed of trust,
23 note, or other interest valuing more than 5
24 per centum of the assets of such entity;



1 “(iii) any person directly or indirectly con-
2 trolling, controlled by, or under common control
3 with, a health maintenance organization; and

4 “(iv) any spouse, child, or parent of an indi-
5 vidual described in clause (i).”.

6 (n) Section 813 of the Health Maintenance Organization
7 Amendments of 1986 (42 U.S.C. 300e nt) is repealed.

8 EFFECTIVE DATE

9 SEC. 4. The amendments made by the preceding sec-
10 tions (other than section 3(n)) are effective on October 1,
11 1988.

○